

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17-BK-3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA

Title III

No. 17-BK-4780-LTS

**INFORMATIVE MOTION OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO
LISTING PRIMARY AMENDMENTS TO TITLE III PLAN OF ADJUSTMENT IN
CONNECTION WITH CERTIFICATION OF 2023 PREPA FISCAL PLAN**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801). Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.

To the Honorable United States District Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Puerto Rico Electric Power Authority (“PREPA” or the “Debtor”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² hereby files this informative motion listing the primary amendments the Oversight Board is making to PREPA’s Title III Plan of Adjustment pursuant to PROMESA section 313:

I. Background

1. On March 1, 2023, the Oversight Board filed the *Modified Second Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority* [ECF No. 3296]³ (as it may be amended, supplemented, or modified, the “Title III Plan”).⁴

2. On March 21, 2023, the Oversight Board informed the Governor, the President of the Senate, and the Speaker of the House of Representatives of Puerto Rico of the schedule for developing, submitting, approving, and certifying a fiscal plan for PREPA for 2023 (the “2023 PREPA Fiscal Plan”).⁵ The schedule called for submitting a proposed fiscal plan by April 12, 2023 and certification by June 2, 2023. This schedule is consistent with the Oversight Board’s

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

³ Unless otherwise stated, all ECF Nos. shall refer to the docket in Case No. 17-4780.

⁴ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

⁵ March 21, 2023 Letter D. Skeel to P. Pierluisi Urrutia, J. Dalmau Santiago, and R. Hernandez Montanez regarding 2023 Fiscal Plan and FY24 Budget Timeline, available at <https://drive.google.com/file/d/1Fwzsm8p6S-10oYpyUkEEUO20ssH58Jic/view>.

initial schedules for certifying fiscal plans for PREPA in prior years. On April 19, 2023, the Oversight Board extended the date to submit a fiscal plan to April 21.⁶

3. Subsequently, on May 5, 2023, “due to delays in completion of the fuel and purchase power expense projections,” the Oversight Board again extended the submission date to May 9, 2023.⁷ The date for certification by the Oversight Board was then moved to June 9, 2023.

4. During the Claim Estimation Hearing⁸ on June 8, 2023, the Oversight Board’s counsel informed the Court the Oversight Board intended to certify the 2023 PREPA Fiscal Plan on June 16, 2023, one week later than its intended certification date of June 9, 2023. The Court ordered the Oversight Board to meet and confer with objectors to the Title III Plan and to file a joint status report by June 21, 2023 (the “Status Report”) “regarding the anticipated impact, if any, of the [2023 PREPA Fiscal Plan] on the confirmation proceedings and schedules, and a proposal for any changes that may be anticipated or requested.” June 8, 2023 Hrg. Tr. at 9:21-25.

5. On June 17, 2023, the Oversight Board filed the *Informative Motion of the Financial Oversight and Management Board for Puerto Rico Regarding Extension to June 23, 2023 for Certification of 2023 PREPA Fiscal Plan* [ECF No. 3767] (the “Informative Motion”). Therein, the Oversight Board informed the Court it was unable to responsibly certify the 2023

⁶ April 29, 2023 D. Skeel Ltr. To P. Pierluisi Urrutia, J. Dalmau Santiago, and R. Hernandez Montanez regarding 2023 Fiscal Plan and FY24 Budget Timeline, available at <https://drive.google.com/file/d/1zhiMwVR7VKEVa5xyZQEbind2K9fKUEpr/view>.

⁷ May 5, 2023 D. Skeel Ltr. To P. Pierluisi Urrutia, J. Dalmau Santiago, and R. Hernandez Montanez regarding 2023 Fiscal Plan and FY24 Budget Timeline, available at https://drive.google.com/file/d/1gPgUpbc_KIzZRKJ8rOOyyU4r6TPY9UIz/view?pli=1.

⁸ The “Claim Estimation Hearing” is the June 6-8, 2023 hearing to determine the amount of the Bondholders’ Unsecured Net Revenue Claim, as defined in the *Opinion and Order Granting in Part and Denying in Part the Financial Oversight and Management Board for Puerto Rico’s Motion for Summary Judgment and the Defendant’s and Intervenor-Defendants’ Cross-Motion for Summary Judgment*, Adv. Proc. No. 19 00391-LTS, ECF No. 147.

PREPA Fiscal Plan by its anticipated deadline of June 16, 2023 and committed to certifying the 2023 PREPA Fiscal Plan and identifying amendments to the Title III Plan on or before June 23, 2023. The Informative Motion also recognized “it is likely the Oversight Board (and other parties) may seek to change the confirmation schedule based on these developments.” *Id.* at 3. Accordingly, the Informative Motion requested the Court extend the deadline to file the Status Report by one week, from June 21, 2023 through June 28, 2023.

6. On June 18, 2023, the Court entered the *Order Concerning Informative Motion of the Financial Oversight and Management Board for Puerto Rico Regarding Extension to June 23, 2023 for Certification of 2023 PREPA Fiscal Plan* [ECF No. 3768], which, among other things, extended the Status Report deadline through June 28, 2023. The Court further directed the Oversight Board to meet and confer with counsel for objectors to the Title III Plan and to file a joint status report by 2:00pm on June 21, 2023 “concerning whether and to what extent the parties believe that confirmation-related dates and deadlines should be altered or suspended in advance of the Oversight Board’s Status Report.” *Id.* at 2.

7. On June 18, 2023, the Ad Hoc Group of PREPA Bondholders (the “Ad Hoc Group”), U.S. Bank National Association (the “Trustee”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”), and Syncora Guarantee Inc. (“Syncora,” and collectively with the Ad Hoc Group, Trustee, and Assured, “Bondholders”) filed the *Urgent Motion of the Ad Hoc Group of PREPA Bondholders, Assured Guaranty Corp., Assured Guaranty Municipal Corp., Syncora Guarantee, Inc., and U.S. Bank National Association as PREPA Bond Trustee to Suspend Upcoming Confirmation Deadlines due to the Oversight Board’s Delay in Certifying PREPA’s 2023 Fiscal Plan* [ECF No. 3769] (“Bondholders’ Urgent Motion”). Bondholders’ Urgent Motion sought an order suspending (i) the June 21, 2023 deadline for filing

witness lists, exhibit lists, and deposition designations, and (ii) the June 26, 2023 deadline for filing witness declarations.⁹

8. On June 19, 2023, in response to Bondholders' Urgent Motion which stated the Oversight Board did not object to the relief it requested, the Court entered the *Order Suspending Certain Confirmation Deadlines* [ECF No. 3770], suspending the deadlines for filing finalized witness lists, exhibit lists, deposition designations, and witness declarations.

9. On June 21, 2023, the Oversight Board and other parties in interest filed the *Joint Status Report of the Financial Oversight and Management Board for Puerto Rico and Other Parties in Interest Regarding Confirmation Schedule* [ECF No. 3781]. Therein, the parties informed the Court that, following their meet-and-confer, there was a consensus that there was no choice, but to request all remaining confirmation-related deadlines be suspended.

10. Also on June 21, 2023, the Oversight Board filed the *Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Suspension of Certain Confirmation Deadlines* [ECF No. 3782] requesting the Court suspend all confirmation-related dates and deadlines, including the dates for the Confirmation Hearing. The Oversight Board further stated that, following certification of the 2023 PREPA Fiscal Plan, it would identify amendments to the Title III Plan. *Id.* at 6.

⁹ The Bondholders requested the Oversight Board to consent to the relief they requested in their Urgent Motion and the Oversight Board responded that it did not object to the relief. The Bondholders never showed their motion to the Oversight Board in advance of filing it, and therefore the Oversight Board did not know the motion contained a litany of attacks on the Oversight Board. At the appropriate time, the Oversight Board will respond. For present purposes, the Oversight Board simply submits the Bondholders' charges and criticisms were based on incorrect facts, assumptions, and legal theories.

11. That same day, the Court entered the *Order Suspending Confirmation Deadlines* [ECF No. 3783] suspending all deadlines established by the Solicitation Procedures Order,¹⁰ the Confirmation Procedures Order,¹¹ and the Confirmation Hearing Procedures Order,¹² pending further order of the Court.

12. On June 23, 2023, the Oversight Board certified the 2023 PREPA Fiscal Plan.¹³ The load projections in the 2023 PREPA Fiscal Plan are substantially lower (and cost projections are substantially higher) than those in the 2022 PREPA Fiscal Plan. Both the projected base rate and surcharge for fuel and purchases power costs are substantially higher. The headroom available for charges to customers for debt service is significantly reduced.

13. Pursuant to PROMESA section 201(b)(1)(J), a Fiscal Plan must contain a debt sustainability analysis, and pursuant to section 201(b)(1)(E) must provide for a debt burden that is sustainable “for Fiscal Years covered by a Fiscal Plan in which a stay under titles III or IV is not effective.” Based on the most current data the Oversight Board has, the 2023 PREPA Fiscal Plan’s debt sustainability analysis provides the maximum amount for creditors PREPA can reasonably

¹⁰ The “Solicitation Procedures Order” is the *Order (I) Approving Disclosure Statement, (II) Fixing Voting Record Date, (III) Approving Confirmation Hearing Notice and Confirmation Schedule, (IV) Approving Solicitation Packages and Distribution Procedures, (V) Approving Forms of Ballots and Voting and Election Procedures, (VI) Approving Notice of Non-Voting Status, (VII) Fixing Voting, Election, and Confirmation Deadlines, and (VIII) Approving Vote Tabulation Procedures* [ECF No. 3304].

¹¹ The “Confirmation Procedures Order” is the *Third Amended and Restated Order Establishing, Among Other Things, Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 3565].

¹² The “Confirmation Hearing Procedures Order” is the *Amended Order Regarding Procedures for Hearing on Confirmation of PREPA Plan of Adjustment* [ECF No. 3759].

¹³ The 2023 PREPA Fiscal Plan is available here: <https://drive.google.com/file/d/1aqXCP728HU7s7uE1Ys-nHvchnJ85dvIJ/view>.

sustain is approximately \$2.5 billion.¹⁴ This amount includes approximately \$2.38 billion determined by the Oversight Board as being the amount of bonds serviceable by rates at or about the 6% share of wallet threshold for the first expected year of implementation (FY 2025). It also includes approximately an additional \$150 million of value the Oversight Board believes can be provided at a tolerable risk level through a combination of additional potential revenue sources and savings.

14. As a result of the certification of the 2023 PREPA Fiscal Plan, changes to the Title III Plan are necessary to meet confirmation and other requirements of PROMESA in sections 201(b) and 314(b)(7). The Oversight Board also intends to submit an updated Best Interest Test report consistent with the 2023 PREPA Fiscal Plan.

II. Amendments to the Title III Plan¹⁵

15. While the structure of the Title III Plan will remain the same in significant respects, certain amendments are required to the Plan to make it consistent with the 2023 PREPA Fiscal Plan.

16. Based on the debt sustainability analysis set forth in Chapter 8 of the 2023 PREPA Fiscal Plan, the Title III Plan will be amended to reduce the amount of New Bonds to be issued from \$5.68 billion to \$2.383 billion. Additionally, the Oversight Board believes PREPA will have

¹⁴ Due to the higher rates projected in the 2023 PREPA Fiscal Plan, the Legacy Charge, as outlined in Schedule B of the Title III Plan, will be revised and reduced to remain within the Oversight Board's affordability parameters for residents and to minimize the risk of pushing consumers past the 6% "share of wallet" threshold for the first expected year of implementation (FY 2025). Similarly, the projected cash flows from the Legacy Charge as set forth in Schedule E of the Title III Plan will be adjusted accordingly.

¹⁵ The amendments set forth herein are summary descriptions. The amount of debt service, calculation of recoveries, and other numerical calculations are preliminary and subject to change. Further details and descriptions of these amendments will be set forth in the amended Title III Plan to be filed by the Oversight Board. In the event of any inconsistency between this Informative Motion and such amended Title III Plan, the amended Title III Plan shall govern.

sufficient revenue sources and savings to repay a total of \$2.5 billion of debt (inclusive of the \$2.383 billion in New Bonds).

17. Fuel Line Lenders, National, Settling Bondholders, and Vitol. Approximately \$1.35 billion of new bonds (and/or cash) will be used to maintain the settlements with the Fuel Line Lenders, National, the Settling Bondholders, and Vitol.

18. Pension Claim. The treatment of the pension claim will not be amended (i.e., it will be treated the same as pension claims in the Commonwealth were treated).

19. Non-Settling Bondholder Claims and General Unsecured Claims. The treatments of the non-settling bondholders' claims and the general unsecured claims will be amended.

20. Non-Settling Bondholder Claims. The non-settling bondholders' claims will be guaranteed a minimum distribution of 12.5% of their allowed claim in the form of New Bonds. In addition, they will receive the CVI currently in the second amended plan and a second CVI described below, adjusted to the amount of their final allowed claim. Once their allowed claim is final, the New Bonds and cash remaining, after distributing the guaranteed minimum distributions of bonds and cash to the non-settling bondholders and general unsecured claimholders (see below), will be distributed *pro rata* between the non-settling bondholders and the general unsecured claimholders based on the non-settling bondholders' actual final allowed claim and the general unsecured claimholders' assumed aggregate allowed claim of \$800 million.

21. Second CVI for Non-Settling Bondholders. A second contingent value instrument (CVI) will be distributed to the non-settling bondholders to provide compensation to non-settling bondholders if PREPA's revenue requirements equivalent per kWh in any actual fiscal year during the term of this CVI are lower than the revenue requirements per kWh as projected for the subject year in the 2023 PREPA Fiscal Plan, after certain reconciliations and deductions to ensure an

“apples to apples” comparison. To the extent actual revenue requirements per kWh equivalent is lower than the revenue requirements per kWh projected in the 2023 PREPA Fiscal Plan on an annual basis, the second CVI will generate additional payments to the non-settling bondholders for such year equal to the product of fifty percent (50%) of the difference in actual revenue requirements equivalent per kWh versus projected revenue requirements per kWh (after reconciliation and deductions), multiplied by actual kilowatt hours consumed in such year. For example, if the first year’s revenue requirements equivalent per kWh is lower than the revenue requirements per kWh for such year projected in the 2023 PREPA Fiscal Plan, the second CVI will yield a payment to bondholders after the first year. If the second year’s actual revenue requirements equivalent per kWh is equal to or higher than projected, the second CVI will not yield another payment until the second year’s deficit is recouped by future results and there is a further amount in excess of projections to pay to bondholders.

22. Expected Repayment Periods for Bonds. The expected term for repayment of the Series A Bonds will extend to longer than the 5 years provided in the Title III Plan, and the weighted average life of such bonds will also extend to longer than the period provided in the Title III Plan. The expected repayment on the Series B Bonds will remain at 35 years, and the weighted average life will increase. The bond interest rate of six percent (6%) per year will remain unchanged.

23. PREPA will no longer issue \$400 million in Series B-2 Bonds to the Commonwealth. The Commonwealth, however, will appropriate such funds to pay PREPA’s allowed administrative expense claims upon emergence or upon such claims’ allowance.

24. Additional Rights of New Bonds. The Title III Plan will also be amended to reflect certain enhancements to the rights of holders of the New Bonds that are currently contemplated in

the filed Plan Supplements, including the New Master Indenture. These amendments include, among other things, (i) the New Bonds and the Title III Plan's current CVI will receive payment from, and be secured solely by, a gross pledge of the Legacy Charge Revenue rather than a net pledge, (ii) PREPA will no longer be able to use Legacy Charge Revenues to pay Operating Expenses unless a *force majeure* event occurs, (iii) an "Operation and Maintenance Covenant" will be added whereby Reorganized PREPA covenants to adjust its rates/charges so that its revenues in each fiscal year are no less than its operating costs, (iv) the "Amendment Test for Replacement of the Legacy Charge" has been expanded to provide a mechanism for the New Bond Trustee to challenge any proposed replacement charge.

25. General Unsecured Claims. The treatment of the general unsecured claims will be amended to provide a guaranteed minimum return of 13.5% on their assumed aggregate allowed claim of \$800 million in the form of cash and New Bonds (at PREPA's discretion). When the non-settling bondholders' allowed claim is final, the remaining cash (if any) and remaining New Bonds not used to make the guaranteed minimum distributions to the non-settling bondholders and general unsecured claimholders, will be allocated to the non-settling bondholders and general unsecured claimholders as set forth in paragraph 20 above. The general unsecured claimholders (a) shall be entitled to receive the CVI offered general unsecured claimholders in the currently-filed version of the Plan, (b) shall not receive the second CVI that is being given to the non-settling bondholders (*see supra* ¶ 21) and (c) shall absorb the upside risk their aggregate final allowed claims will total less than \$800 million and the downside risk their aggregate final allowed claims will total more than \$800 million.

III. Schedule to Amend and Certify Title III Plan

26. The Oversight Board regrets the confirmation schedule initially established by the Court has been upended due to the 2023 PREPA Fiscal Plan. The Oversight Board will be conferring with parties in interest starting tomorrow to try to establish a new schedule.

27. The Oversight Board commits to certifying and submitting a Third Amended PREPA plan of adjustment on or before July 14, 2023. It also intends to use this time to discuss amendments to the Plan with certain settling parties, as certain provisions in the plan may be subject to their reasonable approval.

28. The Oversight Board submits re-solicitation of the plan is unnecessary. The affected classes of claims have already rejected the Title III Plan, and can thus be presumed to reject an amended plan that provides for lower issuance of hard debt. The Title III Plan, as amended, should maintain several impaired accepting classes whose recoveries are not materially impacted by the amendments, and therefore do not need to be resolicited.

Dated: June 23, 2023
New York, New York

Respectfully submitted,

/s/ Martin J. Bienenstock

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer